JOHN R. SWANSON

IBLA 84-732 Decided December 10, 1984

Appeal from decision of State Director, Colorado, Bureau of Land Management, eliminating inventory unit from further consideration as wilderness study area. CO-070-031.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded considerable deference notwithstanding the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

APPEARANCES: John R. Swanson, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

John R. Swanson has appealed from a decision of the State Director, Colorado, Bureau of Land Management (BLM), dated June 1, 1984, eliminating the South Shale Ridge inventory unit (CO-070-031) from further consideration as a wilderness study area (WSA) pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1982).

On November 14, 1980, the Acting State Director, Colorado, BLM, published a decision in the Federal Register (45 FR 75584), in part eliminating unit CO-070-031, totaling 28,860 acres, from further consideration as a WSA. The record indicates that the unit was eliminated because it lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation.

However, on August 23, 1983, on appeal from the initial and intensive inventory decisions with respect to unit CO-070-031, the Board, in Sierra Club -- Rocky Mountain Chapter, 75 IBLA 220 (1983), concluded that BLM had improperly deleted 3,200 acres in the western end of the unit from consideration as part of the unit during the intensive inventory. We, therefore,

directed BLM to include the acreage and to reinventory the unit. The present case involves an appeal from that reinventory decision, which similarly concluded that the unit, now totaling 31,391 acres, lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation.

BLM concluded that the unit lacks outstanding opportunities for solitude for the following reasons:

> The unit's ridgeline has steep slopes and limited vegetative screening that generally allows for open views, which reduce opportunities for solitude since people are able to view each other. Opportunities to experience solitude do exist along the southern boundary but these are limited by the proximity of the boundary and the steep slopes of South Shale Ridge. The Coon Hollow area has benches, drainages and pinyon-juniper cover that provide opportunities for solitude; however, these opportunities are not considered to be outstanding. The northwest quadrant also has drainages that provide solitude in a rolling, pinyon-juniper landscape. The short length of these drainages in conjunction with the steep slopes that occur at their ends, limits the opportunities for solitude. Overall, the unit's narrow configuration and steep slopes reduce opportunities to avoid the sights, sounds and evidence of other people within the unit.

(Revised Wilderness Intensive Inventory at 3-2). BLM also concluded that the unit lacks outstanding opportunities for primitive, unconfined recreation for the following reasons:

> Landscape variety, interesting flora and geologic features, and scenic qualities combine to provide opportunities for hiking, scenic viewing, observing of nature, and photography. However, these primitive recreation opportunities are limited by the narrow configuration of the unit, the ridge, the cherry-stemmed roads and steep slopes which inhibit unconfined movement within the area.

Id. at 3-4.

In his statement of reasons for appeal, appellant contends that unit CO-070-031 should be further considered as a WSA because it contains "impressive" wilderness resources as well as scenic, botanical, and cultural resources. Appellant states that elimination of the unit violates FLPMA, the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531-1543 (1982), the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321-4347 (1982), and the Wilderness Act, as amended, 16 U.S.C. §§ 1131-1136 (1982). Appellant concludes that the unit, which he calculates to contain 37,210 acres, should be designated a wilderness area "at this time."

[1] Section 603(a) of FLMPA directs the Secretary of the Interior to review roadless areas of 5,000 acres or more, which are identified as having wilderness characteristics described in the Wilderness Act, supra, for possible inclusion in the wilderness system. The Secretary is then

directed to report to the President his recommendations as to the suitability or nonsuitability of each such area for preservation as wilderness. After recommendations by the President, Congress will make the final wilderness designations. 1/ 43 U.S.C. § 1782(b) (1982).

BLM has divided the wilderness identification and review process into three phases: Inventory, study, and reporting. The identification of wilderness characteristics has been relegated to the inventory phase. The June 1984 BLM decision marks the end of the inventory phase and the beginning of the study phase of the wilderness review process.

The key wilderness characteristics described in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1982), are naturalness and outstanding opportunities either for solitude or a primitive and unconfined type of recreation.

Appellant characterizes the wilderness resources, presumably including opportunities for solitude and primitive, unconfined recreation, in unit CO-070-031 as "impressive." There is no question that the unit offers some of these opportunities. The critical question, however, is whether such opportunities are outstanding. On this question, appellant expresses mere disagreement with BLM's assessment. There is no evidence that BLM overlooked significant topographic, vegetative, or other features affecting opportunities for solitude or primitive, unconfined recreation. Appellant merely disagrees with the weight to be given these features. This is not sufficient to establish an error of either fact or law in the wilderness inventory of unit CO-070-031. Timothy O. Kesinger, 72 IBLA 100 (1983). As we noted in Richard J. Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981).

> These [wilderness] evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

The deference which the Board accords to BLM wilderness evaluations does not mean that such determinations are immune from administrative review. However, it does mean that an appellant seeking reversal of a decision to include or exclude land from a WSA must show that the decision below was premised either on a clear error of law or a demonstrable error of fact. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981), appeal filed, Union Oil Company of

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1/ Appellant is incorrect in his assumption that BLM can at this stage of the wilderness review process designate unit CO-070-031 as a wilderness area. BLM does not have such authority. This authority is reserved by Congress by section 603(b) of FLPMA. Appellant also refers to the acreage of the unit as 37,210. The accurate acreage is 31,391.

California v. Watt, Civ. No. 82-427 PHX (D. Ariz. Mar. 23, 1982). After a review of the statement of reasons filed by the appellant and the record, we conclude that appellant has not done so. Accordingly, we find that there was a proper basis for the BLM determination that unit CO-070-031 should be eliminated from further consideration as a WSA. 2/ Animal Protection Institute of America, 62 IBLA 222 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

2/ Appellant also alleges that BLM violated a number of statutes in eliminating unit CO-070-031 from further consideration as a WSA. However, appellant has offered no evidence of violation and we can discern none.